

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

FRANK FIGUEROA,

Petitioner,

VS.

RICK THALER,

Respondent.

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CIVIL ACTION NO. C-10-374

**AMENDED**  
**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION**

On August 16, 2012, United States Magistrate Judge B. Janice Ellington signed a Memorandum and Recommendation recommending that petitioner's motion (D.E. 63) be denied; that insofar as petitioner seeks review of claims which are successive, those claims be denied without prejudice so that petitioner may seek leave of the Fifth Circuit to file a successive petition; and that a Certificate of Appealability be denied. On September 4, 2012, petitioner filed Objections to the Magistrate's Recommendations.

Having reviewed the findings of fact and conclusions of law therein, as well as the pleadings on file and petitioner's objections, and having made a *de novo* disposition of those portions of the Magistrate Judge's recommended disposition to which objections were raised, *see Koetting v. Thompson*, 995 F.2d 37 (5th Cir. 1993), 28 U.S.C. § 636(b)(1)(C); Fed.R.Civ.P.72(b), the Court hereby adopts as its own the findings and conclusions of the Magistrate Judge.


Accordingly, it is ORDERED that petitioner's motion (D.E. 63) is denied. It is further ORDERED that insofar as petitioner seeks review of claims which are successive, those claims

are denied without prejudice so that he may seek leave of the Fifth Circuit to file a successive petition. Certificate of Appealability is denied.

The petitioner filed a Notice of Appeal on August 27, 2012. (D.E.67). Although petitioner's Notice of Appeal was premature, it shall be considered timely as an appeal from this order.

The clerk shall enter this order and provide a copy to all parties.

SIGNED and ORDERED this 6th day of September, 2012.

  
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Janis Graham Jack  
Senior United States District Judge